Before the Federal Communications Commission Washington, D.C. 20554

In the Matter of)	
Applications of Sprint Nextel Corporation Transferor)	
SoftBank Corp., and Starburst II, Inc., Transferees)	IB Docket No. 12-343
Joint Applications for Consent to Transfer of)	
Control of Licenses, Leases, and)	
Authorizations; and Petition for Declaratory)	
Ruling under Section 310(b)(4) of the)	
Communications Act of 1934, as amended)	

COMMENTS ON PETITION TO DENY

Filing jointly, we five EBS licensees ("EBS Licensees")¹ hereby comment on the petition to deny ("Petition") filed by the Consortium for Public Education and The Roman Catholic Diocese of Erie, Pennsylvania and its affiliates ("Petitioners"). The EBS Licensees dispute key facts and assumptions that the Petitioners set forth in the Petition, and we are participating in this proceeding because we believe that the Commission should have access to full and accurate information in the above-captioned matter. In particular, the Petition's characterization of Clearwire's approach to educational uses of EBS is contrary to the EBS Licensees' first-hand experience. We consider it to be both inaccurate and unfair.

("PRETC"), and Twin Cities Schools' Telecommunications Group ("TCSTG").

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¹ The EBS licensees that are jointly submitting this pleading are are: Chicago Instructional Technology Foundation ("CITF"), Denver Area Educational Telecommunications Consortium ("DAETC"), Instructional Telecommunications Foundation ("ITF"), Portland Regional Educational Telecommunications Corporation

I. About the EBS Licensees and Their Mobile Broadband Services

The EBS Licensees are long-standing non-profit organizations, each of which holds at least one EBS license.² The EBS Licensees employ common management. Each of the EBS Licensees is party to one or more excess-capacity agreements with a Clearwire Corporation subsidiary, Clearwire Spectrum Holdings II, which agreements were concluded in 2006. It is through their agreement with Clearwire that they have obtained a large number of free wireless broadband accounts, which they are authorized to give away, or provide for a fee, to educational institutions and non-profit organizations. They have extensive experience dealing with Clearwire.

One of the EBS Licensees' principal joint efforts is known as Mobile Citizen, a project that provides low-cost wireless service to non-profit organizations and educational institutions.³ As of this date, Mobile Citizen has approximately 7,000 wireless broadband accounts in service, and that number is growing at a substantial rate. All of these accounts operate over Clearwire's WiMAX network. Many Mobile Citizen accounts are used principally within the GSAs of the EBS Licensees' licensed systems, but, as is permitted under our agreement with Clearwire, a portion are chiefly deployed in other communities where Clearwire offers service.

The Mobile Citizen user base is remarkably diverse, but can be grouped into three principal constituencies: 1) Educational institutions (both large and small, serving students from the elementary grades to higher education); 2) Non-profit organizations that seek to reduce the

² CITF is licensee of WLX-630, Chicago. DAETC is licensee of WHR-488, Denver. ITF is licensee of WHR-509, Indianapolis; WHR-527, Philadelphia; WHR-512, Sacramento; WHR-511, Kansas City; WLX-699, Salt Lake City; WLX-694, Las Vegas; and WLX-816, Phoenix. PRETC is licensee of WHR-522, Portland, OR. TCSTG is licensee of WHR-487, Minneapolis.

³ More complete information about Mobile Citizen may be found online at http://mobilecitizen.org/.

digital divide by providing services to low income families and students; and 3) Non-profit organizations devoted to other public service purposes.

Educational Uses. With regard to educational institutions, there is no single example that conveys the breadth of Mobile Citizen uses. However, one can gain a glimpse into the program through the experience of Northside College Prep High School in Chicago, Illinois. The following account is taken from the Mobile Citizen website:

Teachers at Northside College Prep High School in Chicago are committed to digitally evolving their curriculum because they know it motivates students to learn. When they discovered that several of their students did not have reliable access to the Internet outside of school, they responded by bringing in Mobile Citizen to provide a low-cost mobile Internet solution.

Mobile Citizen's low cost program enabled the school to purchase accounts for the students in question, and the students gained the access to the Internet that was crucial for completing homework assignments. And because the service is mobile and Northside draws students from all over Chicago, the students were even able to stay productive on their lengthy bus and subway commutes to and from school.

"The new digital divide is between students who have Internet access in all of the places they study and those who do not," said Giovanni Benincasa, Northside's Curriculum Director and English Teacher. "Students spend weekends at basketball tournaments, try to get some reading done during a break at a part-time job, live with mom during the week and dad on the weekend – in an increasingly digital world, mobile access is a must for today's on-the-go student." ⁴

The cost of Mobile Citizen service to end users varies, but is most commonly \$120 per account per year, a fraction of the cost of equivalent commercial service. In certain cases, the EBS Licensees provide free wireless broadband service, including free mobile devices. The EBS Licensees most commonly provide free service to schools and other educational users.

Digital Divide Uses

Mobile Citizen works with a number of non-profit organizations that seek to bridge the digital divide that isolates many low income people from the mainstream. One such organization is One Community, a recipient of federal stimulus funds through the BTOP

⁴ http://mobilecitizen.org/blog/another-mobile-learning-success-story

Sustainable Broadband Adoption program operated by the US Department of Commerce. A précis of Mobile Citizen's work with One Community is attached as Exhibit I to this pleading. You will note that, as cited in that exhibit, more than half of the participants in One Community's program have an annual household income below \$15,000.

Efforts to combat the digital divide represent the largest current use of Mobile Citizen accounts.

Other Non-Profit Uses

Because non-profit organizations are very different, it is difficult to summarize how they put Mobile Citizen to use. However, here are two examples, drawn from the Mobile Citizen website.

Ronald McDonald House. Believing that every child deserves a safe and supportive place to grow, Ronald McDonald House Charities of Greater Las Vegas creates and supports programs that directly improve the health, education and well-being of children in their community. And they do that thanks to a very dedicated and an increasingly mobile staff. Families and children staying at the Ronald McDonald House can be extremely susceptible to illness, and as a result they have a very strict health policy for staff -- stay home if you're sick to help prevent transmission and protect the families in the House. CLEAR from Mobile Citizen gives them the ability to have a 'mobile office' and necessary Internet access ensuring staffers have the same access to applications as they had in the office and enabling them to work productively off-site. In addition to benefitting from ongoing productivity of their staff, RMHC of Greater Las Vegas will be able to extend mobile broadband benefits to their families so they can connect with loved ones back home, whether they are at the House or in a hospital caring for their child.⁵

<u>Feeding America</u>. Feeding America's mission is to feed the hungry through a nationwide network of more than 200 food banks serving all 50 states, the District of Columbia and Puerto Rico. Through food pantries, soup kitchens and other agencies, Feeding America helps secure and distribute more than 3 billion pounds of food and grocery products annually with a highly mobile staff. In fact, approximately one third of Feeding America's national office staff are on the go, working with food banks, agencies and advocates on the road to raise awareness of the issue of hunger in the United States.

⁵ http://mobilecitizen.org/nonprofit-case-studies

And with all those devices and all that mobility, mobile Internet costs were adding up.

Feeding America Senior Vice President Kevin Lutz looked at the organization's mobile Internet bills and realized he could save 75% by working with Mobile Citizen, a low-cost mobile Internet provider for nonprofits.

"Our research shows that for every dollar raised, we can provide eight meals to the people we serve. That also means for every dollar *saved* by reducing our mobile Internet costs, that's money that can go to help feed someone in need in our community - and that is our ultimate goal." ⁶

More details on Feeding America's use of Mobile Citizen service can be found in Exhibit II of this pleading.

II. <u>The Petition's Characterization of Clearwire's Approach to Educational Uses of EBS Is Inconsistent with the EBS Licensees' Direct Experience and Unfair.</u>

Among other allegations, the Petition charges that "...Clearwire has done virtually nothing to comply with bare minimum educational use obligations for EBS spectrum..."

In our experience, this contention is wrong. In fact, Clearwire has benefited the EBS Licensees' educational and non-profit work in ways that go beyond its obligations.

Most fundamentally, we could not operate Mobile Citizen if Clearwire had not constructed---and did not maintain---a widespread 4G wireless broadband network. Mobile Citizen customers, like Clearwire's own customers, rely on the quality and extent of the Clear WiMax network. In the future, the character and extent of the planned Clearwire LTE network also will be crucial to our ability to serve the educational and non-profit sectors.

We have learned---sometimes the hard way---about the complex systems that are needed for a service like Mobile Citizen. For example, we provide telephone-based customer service to our users, often people who have very little experience operating computers or internet

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⁶ *Id*.

⁷ Petition at p. 6.

connections. At our request, Clearwire gives our customers and Mobile Citizen personnel direct access to its highest level of technical support. Hence, if a Mobile Citizen user phones our staff with a technical question during business hours, we can establish a three-way phone call with Clearwire's most trained highly people---"level three" Clearwire tech support, bypassing the lower level staff who field most calls. After business hours, our phone system routes technical questions directly to Clearwire level three tech support. Though this may seem obvious, it is significant---especially for late night calls---that Clearwire's level three people not only have technical expertise, but also are trained regarding what Mobile Citizen is and how it works. This close collaboration has made a significant difference in our customers' experience with technical support.

Mobile Citizen now distributes thousands of wireless broadband devices annually.

Clearwire handles all equipment inventories, and drop ships devices to our customers. Though we could fulfill these functions ourselves, the cost and efficiency drain would be very considerable.

In honesty, we must say that it has taken time and hands-on experience---both ours and Clearwire's---to build our systems to their current state, and further improvements will be required if we are to fulfill our ambitious plans. However, the picture of Clearwire that one gains from the Petition is unrecognizable to us, and, indeed, it is an affront to our sense of fairness. Over a number of years, Clearwire has made genuine and tenacious efforts to help us turn what was merely an aspiration into a functioning Mobile Citizen system that benefits both education and many segments of the community at large. This has been no small task for us, and would have been impossible without significant help from Clearwire.

We have studied the table set forth on page 7 of the Petition, as well as Exhibit 1 to the Petition, both of which include a number of communities where the EBS Licensees offer Mobile Citizen service. Even if one takes into account only the EBS Licensees' operations, it appears that these figures significantly understate the extent of educational wireless broadband service in those locations. Though we are still placing educational Mobile Citizen accounts, and have not reached our internal targets in each pertinent GSA, our plan is to have *no fewer than* 100 accounts in service with accredited educational institutions in each metro area where an EBS Licensee holds a license. We have already well exceeded this quantity in certain communities.

III. The Petition's Contentions About the Effect of Foreign Ownership of Sprint Are Unsupported and May Well Be Erroneous.

We note that the Petition's contends that "...grant of the Application would allow a foreign company to control the U.S. EBS spectrum that is reserved for the promotion of U.S. educational, nonprofit and religious institutions and their missions, thereby further minimizing the potential the EBS Spectrum will be developed for the purposes and promises envisioned by the Commission and these stakeholders."

The EBS Licensees have no inside information concerning Softbank's plans or aspirations concerning EBS. We agree that this is a legitimate topic for a public interest examination of the above-captioned transaction, and we would appreciate knowing more about those plans. However, we see no reason at this stage to make an adverse determination, and, indeed, there are some strong positive considerations.

We refer to our prior observation that efforts like those of Mobile Citizen are dependent on the nature and extent of the underlying wireless broadband network. According to

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⁸ As well, some of the EBS Licensees offer one-way educational video service over mid-band EBS spectrum in several of these metro areas.

⁹ Petition at p. ii.

Clearwire's recent filings with the Securities and Exchange Commission, Clearwire faces significant financial obstacles unless it receives substantial additional funding. For instance, in a recent draft proxy statement concerning Sprint's proposed acquisition of 100% of Clearwire (a transaction referred to therein as the Merger), Clearwire avers that if the "Merger is not completed... substantial doubt may arise regarding [Clearwire]'s ability to continue as a going concern... Excluding any financing by Sprint pursuant to the Note Purchase Agreement, [Clearwire] currently has capital resources that it believes to be sufficient to support its operations into approximately the fourth quarter of 2013."

According to the same SEC filing, a financial advisory firm hired by Clearwire to study the Sprint offer, as well as alternatives to that offer, noted that under both of two scenarios presented by management regarding operation as an independent company, Clearwire faces significant funding shortfalls: approximately \$3.9 billion of peak cumulative cash shortfalls for one scenario by 2017 and \$2.1 billion for the other by 2015.¹¹

Another section of this draft proxy statement observes that: "Under SEC rules governing 'going private' transactions, the Sprint Parties are required to express their purposes and reasons for the Merger." This section contains the following averral by Sprint:

After the effective time of the Merger, Sprint expects that [Clearwire] will continue its current operations, except that Sprint and [Clearwire] will operate as an integrated enterprise with combined expertise and resources, and, if the Sprint-SoftBank Merger is consummated, [Clearwire] will have access to the expertise and resources of SoftBank as well. With combined expertise and resources, Sprint expects that [Clearwire] will have the financial resources needed to continue to transition [Clearwire's] network from WiMAX to LTE technology and improve wireless broadband service to [Clearwire's] and Sprint's customers.¹²

¹⁰ Clearwire's Form PREM14A, (Proxy Statement – Merger or Acquisition (preliminary) filed with the SEC on 2/1/13 for the period ending 3/1/13, p. 67.

¹¹ *Id.*, p. 52.

¹² *Id.*, p. 63.

While the EBS Licensees are in no position to vouch for representations by Sprint, this accounts seems plausible to us. We have followed the situation sufficiently to believe that Clearwire, standing on its own, will face serious financial challenges. We can attest that loss or compromise of the Clearwire network would be a devastating blow to Mobile Citizen and all efforts of its type. Hence, contrary to the Petition's contention, the entry of SoftBank may be just the ingredient that is most needed to further "the potential the EBS Spectrum will be developed for the purposes and promises envisioned by the Commission and these stakeholders."

Respectfully submitted,

EBS LICENSEES

By: /s/
John B. Schwartz
Their President

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February 12, 2013

¹³ Paraphrasing the Petition at p. ii.

CERTIFICATE OF SERVICE

I, John Schwartz, hereby certify that on this 12th day of February, 2013 a copy of the foregoing Opposition to Petition to Deny was filed electronically with the Commission by using the ECFS system and that a copy of the foregoing was served upon the parties below via first class and electronic mail:

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